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State of Montana

Office of the Legislative Auditor

REPORT TO THE LEGISLATURE

CERTIFICATE OF NEED PROGRAM

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

This report provides information regarding the Certificate of Need program and identifies areas for legislative consideration.

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Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

88P-33

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Members of the performance audit staff hold degrees in disciplines appropriate to the audit process. Areas of expertise include business and public administration, statistics, economics, computer science, and engineering.

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February 1989

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The Legislative Audit Committee
of the Montana State Legislature:

We conducted a review of the Certificate of Need program administered by the Department of Health and Environmental Sciences. The report provides information regarding the Certificate of Need program and identifies areas for legislative consideration. The department did not provide a formal response since the report does not include formal recommendations.

We wish to express our appreciation to the staff of the Department of Health and Environmental Sciences and other interested parties for the assistance they provided during the audit.

Respectfully submitted,

Scott A. Seacat
Legislative Auditor

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Office of the Legislative Auditor

REPORT TO THE LEGISLATURE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

CERTIFICATE OF NEED PROGRAM

February 1989

Report Number 88P-33

Members of the audit staff involved in this audit were: Dave Gould, manager, and Kent Rice, auditor-in-charge.

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LIST OF ILLUSTRATIONS

ADMINISTRATIVE AND APPOINTIVE OFFICIALS

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Dr. Sidney Pratt, Acting Director

William Opitz, Deputy Director

HEALTH SERVICES DIVISION

Dale Taliaferro, Administrator

HEALTH PLANNING AND RESOURCE DEVELOPMENT BUREAU

Charles Aagenes, Bureau Chief

STATEWIDE HEALTH COORDINATING COUNCIL

Dr. Mark B. Listerud, Chairman

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Rudyard B. Goode

Kyle Hopstad

Ray M. Lynch

Representative J. Melvin Williams

CHAPTER I

INTRODUCTION

The Certificate of Need (CON) program is a capital expenditure and development review and approval program of health care facilities and services. Chapter 477, Laws of 1987, required the Department of Health and Environmental Sciences (DHES) to provide an evaluation of the need to continue CON beyond June 30, 1989, and to identify for the 1989 Legislature necessary alternative legislation if CON is discontinued. In addition, Chapter 477 intended that the Legislative Audit Committee review and, if possible, complete a performance audit of the CON program with related recommendations.

The main objectives of our review were to:

1. Examine the CON administrative process.
2. Gather comments from entities involved in the CON process.
3. Determine possible effects of CON program termination.
4. Identify possible alternatives to the CON program.
5. Identify any areas requiring legislative consideration.

We reviewed administrative activity at the Health Planning and Resource Development Bureau of DHES and examined a sample of CON project application files. The review period covered CON program activities since its inception in 1975.

We contacted health care providers, health care consumers, and members of health planning and advisory groups to obtain their opinions and comments regarding the CON program. We also contacted other states to obtain information regarding CON activity in those states.

DHES was to provide, by December 1, 1988, an evaluation of the need to continue CON beyond June 30, 1989, and identify alternative legislation needed if CON is discontinued. The Statewide Health Coordinating Council (SHCC) evaluated the need for CON through public hearings. The SHCC held public hearings and supported continuation of CON. DHES also supports continuation of CON and has submitted proposed legislation to the 1989 Legislature. The department intends to provide information regarding the need for the CON program during the presentation of the proposed legislation.

Based upon the information available, we found it difficult to ascertain whether Montana's CON program has been effective. Elimination of CON in other states has had varied short-term effects; but long-range effects are unknown. Some

states experienced one or several adverse effects from CON program termination, while other states experienced no adverse effects or had favorable results. Economic conditions, competition, occupancy rates, population changes and concentrations, and market changes influenced the outcome of other states' termination of CON programs, but these factors had different effects in each state.

The following chapters provide basic information on the CON process and discuss program activities and areas for legislative consideration.

COMPLIANCE

We conducted a review of bureau compliance with applicable statutes and administrative rules related to the CON program. The bureau is generally in compliance with the statutes and rules. We found one occurrence of noncompliance which is discussed in Chapter II of this report.

INTERIM MEMORANDUMS

During the review we asked officials at the Health Planning and Resource Development Bureau for written responses to selected issues. These areas related to potential report issues and recommendations. The bureau implemented one of the recommended changes prior to completion of our review. This change is noted later in the report.

We also issued management memorandums to department officials on issues which were less significant. The issues were:

-- CON Application Detail Listings - The bureau currently compiles a detailed computer listing of CON application information. The information is obtained from an applicant's initial letter of intent. We recommended the bureau update the CON application detail listing for each application, after issuing a final decision.

-- Program Performance Evaluation Process - During our review bureau officials provided goals and objectives for the CON program. We recommended the bureau develop an evaluation process that evaluates program performance in comparison with these goals and objectives.

CHAPTER II

BACKGROUND

This chapter discusses the CON review process, the history of health planning in Montana, and the Health Planning and Resource Development Bureau. Also discussed are legislative intent, recent changes in CON laws, the Statewide Health Coordinating Council (SHCC), and comparative information on other states' CON programs.

THE HISTORY OF HEALTH PLANNING AND CON

Government sponsored health planning and regulation of health facilities construction began in 1946 with the passage of the Hill-Burton Act. The act provided federal grants for hospital construction and required hospitals receiving federal funds to provide a certain amount of "free" care to the poor. This act also required states for the first time to develop a formal health facilities planning process. During the 1960s, federal, state and local entities initiated more comprehensive health planning efforts. In 1964 New York became the first state to enact CON legislation.

The federal National Health Planning and Resource Development Act (NHPRD) of 1974 initiated formal CON programs. The NHPRD Act provided a system for allocating health resources in a state and required all states to establish a CON program by 1980. Montana's CON program started in July 1975. At first, federal specifications for CON were enforced through economic sanctions on federal health funds; but with time, demands to conform decreased. Federal government involvement in health planning was discontinued in November 1986 when federal funding for health planning ended.

Reductions in federal funding for health planning caused some states to cut back or drop their CON programs. The concept of free market competition in the health care industry, as well as a lack of demonstrated benefits of CON programs, also caused some states to deregulate their health care programs and drop or streamline regulations requiring CON program review. By early 1986, seven out of forty-nine states eliminated their CON programs and other states are currently, or will be, evaluating their CON programs.

Legislative Intent

We reviewed legislative committee minutes related to Montana's CON program. The Montana Legislature intended that the CON process would improve health service in several ways:

1. Cost containment
2. Quality of care
3. Availability of services
4. Access to services
5. Prevention of duplication

The CON process focuses mainly on cost containment and accessibility of services. CON addresses legislative intent by attempting to limit excess expenditures and approve projects which improve accessibility and serve the entire community.

Changes in Montana's CON Laws

Montana's original CON laws were enacted under Chapter 447, Laws of 1975. Montana's statutes relating to CON have gone through recent changes. Chapter 329, Laws of 1983, generally revised and clarified the laws relating to CON for health care facilities. A major purpose of the bill was to allow the Department of Social and Rehabilitation Services (SRS) to control Medicaid costs.

Chapter 26, Laws of 1985, eliminated appeals to the Board of Health and Environmental Sciences, and amended the notice of intent, application, and review processes.

Chapter 477, Laws of 1987, generally revised and clarified CON requirements for health care facilities and extended the time the CON laws will be in effect. The bill provides for repeal of Montana's CON program on July 1, 1989, unless the legislature in 1989 recommends otherwise. These changes maintained the CON program and a minimal data and planning function.

THE CERTIFICATE OF NEED REVIEW PROCESS

The CON process involves review and approval of plans for any proposed capital expenditure (above a specific amount) by any person or health care facility. Review occurs only if expenditures exceed the following thresholds:

a) $1,500,000 for construction of health care facilities;
b) $ 750,000 for acquisition of equipment; and
c) $ 150,000 for new services.

Facilities and services subject to the CON process include:

-- hospitals;
-- home health agencies;
-- long-term care facilities;
-- personal care facilities;
-- medical assistance facilities;
-- nonfederal ambulatory surgical facilities;
-- mental health centers with inpatient services;
-- inpatient chemical dependency facilities; and
-- rehabilitation facilities with inpatient services.

Expenditures by or on behalf of a health care facility which are subject to CON review include expenditures for acquisition, improvement, expansion, or replacement of medical facilities or equipment. Expenditures for changes in bed capacity and addition of health services are also subject to review. The CON process covers expenditures by any person for major medical equipment, acquisition of 50 percent or more of an existing health care facility, and establishment of a health care facility. The CON process also reviews the expansion of services by a home health agency, and the use of hospital beds as skilled or intermediate nursing care beds, or intermediate developmental disability care beds. A fee based on the proposed capital expenditure must accompany a CON application. Fees are assessed to help offset operational costs of the CON program.

CON Process Structure

The CON review process begins when the bureau receives a letter or letters of intent (LOI's) for proposed capital expenditures. The bureau notifies the applicant and interested parties of the intent and application requirements.

Applications for new beds or major medical equipment are grouped together by category and region of the state, then held until the end of a time period specified in the ARMs. Only these types of applications require this "batching" process. All other applications start the CON review process when received by the bureau. On receipt of a formal application, bureau officials determine if the application is complete. The bureau returns incomplete applications, or contacts the applicant for further information.

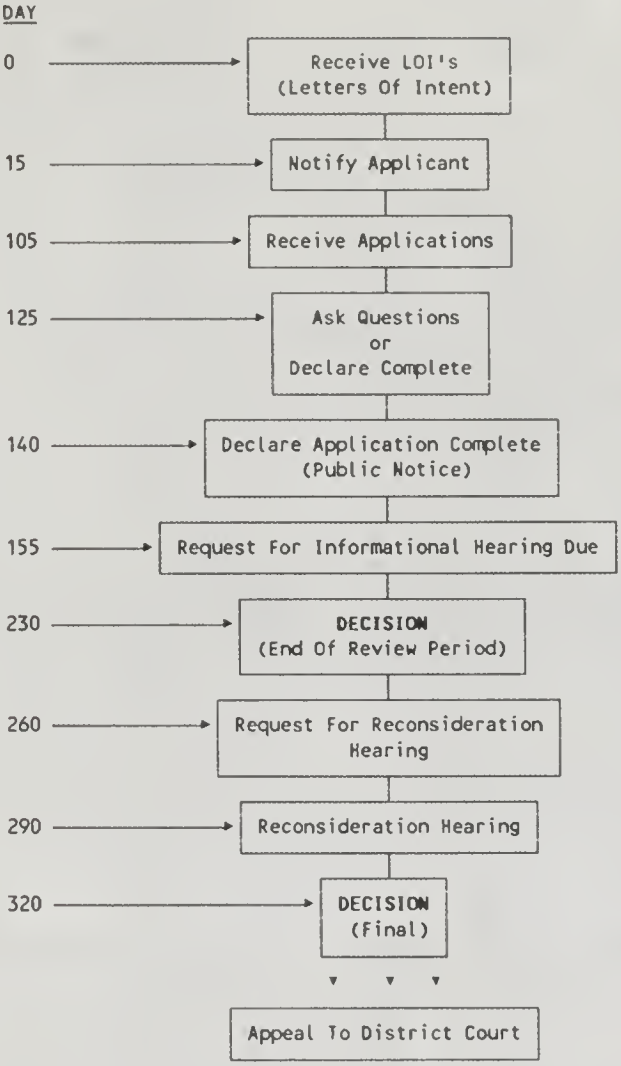
Once an application is complete, the bureau issues a public notice of acceptance. Requests for informational hearings are then due. An informational hearing can be requested by any interested party, including the DHES and enables the public to express their views of the proposed project. Bureau staff then provide recommendations for approval or disapproval of the CON application after the

informational hearing, if a hearing is requested. The DHES director makes the final decision for approval or disapproval of the application.

An applicant can request a reconsideration of the director's decision. After reconsideration, the applicant can appeal the director's decision to district court if the CON applicant is still not satisfied.

Flowcharts of the non-batched and batched processes, with time limits associated with each step of the process, follow. The bureau can modify the time limits to meet bureau/applicant needs. Previous review periods took anywhere from 45 days to over 2 years.

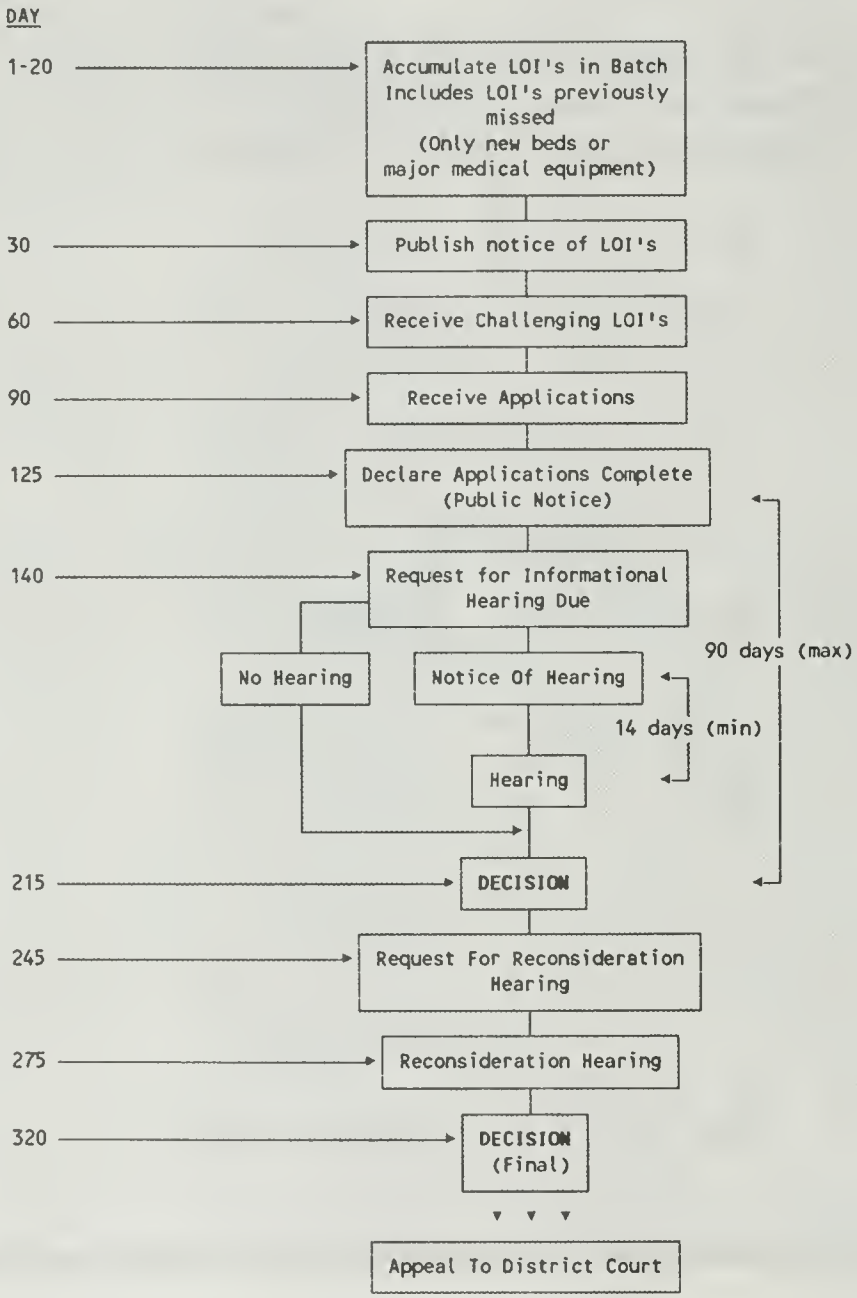
CERTIFICATE OF NEED PROCESS - NON-BATCHED APPLICATIONS



Source: Compiled by Office of the Legislative Auditor

Illustration 1-A

CERTIFICATE OF NEED PROCESS - BATCHED APPLICATIONS



Source: Compiled by Office of the Legislative Auditor

Illustration 1-B

CON Process Activity

We developed a summary of all CON applications, from the start of CON through December 1988. Illustration 2 shows a yearly breakdown of the number of CON applications received with proposed capital expenditures. The chart also includes the number of applications approved and disapproved.

CON APPLICATION ACTIVITY
FOR PERIOD 01/01/78 TO 12/31/88

Calendar Year	Proposed Capital Expenditures	# of Apps Completed	# of Apps Withdrawn	# of Apps Active	Approved Capital Expenditures	Apps Approved by DHES	Disapproved Capital Expenditures	Apps Disapproved by DHES	# of Decisions Appealed
1978	$ 4,706,303	26	17	0	$ 2,776,371	26	$ 0	0	0
1979	$ 41,910,508	44	13	0	$ 25,067,208	43	$ 1,065,000	1	1
1980	$ 29,725,525	37	11	0	$ 26,816,225	37	$ 0	0	0
1981	$110,170,807	27	11	0	$ 90,641,871	27	$ 0	0	2
1982	$ 32,416,990	40	10	0	$ 14,769,895	38	$10,187,045	2	3
1983	$ 61,274,475	50	21	0	$ 41,194,497	38	$18,611,478	12	8
1984	$ 15,905,232	58	12	0	$ 11,717,602	54	$ 3,377,630	4	4
1985	$ 59,367,830	57	20	0	$ 45,503,214	49	$ 7,336,925	8	7
1986	$ 9,741,141	37	19	1	$ 8,991,141	31	$ 750,000	6	3
1987	$ 21,306,641	43	7	0	$ 19,319,884	34	$ 578,694	9	2
1988	$ 11,279,978	21	6	25	$ 6,419,845	17	$ 4,860,133	4	2
Totals	$397,805,430	440	147*	26	$293,217,753	394	$46,766,905	46	32

Apps = applications
* proposed capital expenditures total $57,820,772

Source: Compiled by Office of the Legislative Auditor from
Health Planning and Resource Development Bureau records

Illustration 2

The expenditure information above is compiled by the bureau from information received in LOI's. These figures may not reflect actual project totals due to the possibility of change during the CON process. Applications received by the bureau but determined not reviewable under CON are not included in the chart above.

HEALTH PLANNING AND RESOURCE DEVELOPMENT BUREAU

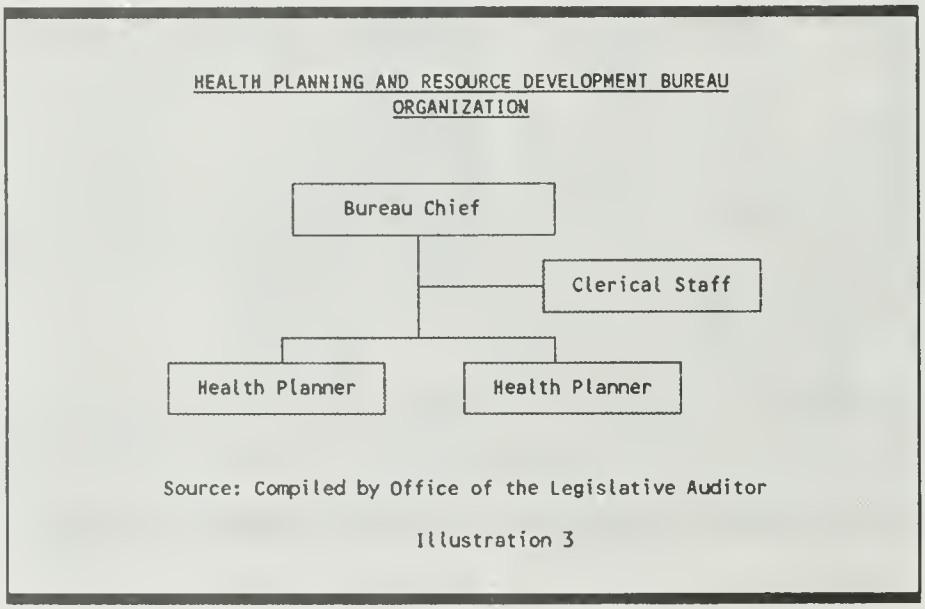
In Montana, the Health Planning and Resource Development Bureau is responsible for administering the CON program and health planning. The following sections discuss bureau responsibilities, bureau organization and staffing, income and expenditures, and program costs.

Bureau Responsibilities

Bureau staff are responsible for health planning, administration of the CON program, and collection, maintenance and distribution of health facility, health services, and medical personnel data. Staff review CON applications submitted to the bureau as well as provide some assistance to providers and consumers on health planning issues. After completing their review, bureau staff provide a recommendation for approval or denial of a CON application to the DHES director.

Bureau Organization and Staffing

The Health Planning and Resource Development Bureau is authorized a staff of 4.75 full-time equivalents (FTE) but currently has a staff of 4.25 FTE. The following chart depicts the current organizational structure of the bureau.



Source: Compiled by Office of the Legislative Auditor

Illustration 3

Three bureau staff are directly involved with CON reviews and health planning issues, and 1.25 FTE are clerical staff. Bureau staff levels gradually declined from the fiscal year 1979-80 level of 16.5 FTE to the current level. Staff workload declined due to decreased federal reporting requirements. There is less health planning because of federal funding decreases. Other DHES divisions provide support services, such as legal assistance, hearings officers and hearings reporters.

Bureau Income and Expenditures

The Health Planning and Resource Development Bureau was formerly funded with federal health planning funds and general fund monies. However, the bureau is now funded by state General Fund monies due to the elimination of all federal funding in fiscal year 1986-87. Bureau income is generated through assessment of CON application fees and reconsideration hearing fees. All fees collected are deposited in the state General Fund. The following illustration shows bureau revenue and expenditures for fiscal years 1984-85 through 1987-88.

HEALTH PLANNING AND RESOURCE DEVELOPMENT BUREAU
REVENUE AND EXPENDITURE LEVELS (UNAUDITED)
Fiscal Years 1984-85 through 1987-88

	Fiscal Years			
Category	1984-85	1985-86	1986-87	1987-88
Revenue	$250,956	$218,733	$ 73,218	$ 89,791
Expenditures				
Personal Services	$182,609	$235,996	$157,458	$135,495
Operating Expenses	$ 68,670	$ 68,077	$ 24,990	$ 24,516
Equipment	$ 4,592	$ 2,717	$ 0	$ 324
Total Expenditures	$255,871	$306,790	$182,448	$160,335

Source: Statewide Budgeting and Accounting System

Illustration 4

Other Program Costs

During our audit we noted bureau operating costs do not include costs for CON related services provided by staff from other DHES divisions such as legal assistance and hearings officer and hearings reporter services.

During fiscal year 1986-87, the hearings officer completed 200 hours of CON related work, legal staff expended about 530 hours of time on CON activity, and the hearings reporter expended 290 hours. In addition, two staff from the Licensing and Certification Bureau of DHES spent about one percent of their time on CON related activity. An approximation of the cost for these support services, during fiscal year 1986-87, is $17,000. These support services continue to be provided by other DHES staff for CON related activity.

CON PROGRAM OPERATIONS

We reviewed a sample of 24 CON project files from the start of CON through December 1987. We compared actual file contents with bureau summary information of CON applications. This comparison provided us with a determination as to the adequacy of file documentation. We also reviewed status, annual, and financial reports submitted to the bureau by health care providers.

We found the bureau is consistent in its review of CON project applications. The process is completed in a structured and timely manner. Files contain similar information in chronological order. However, the files lacked consistent documentation of reasons for decisions, and information was not adequately verified. We also performed a compliance review on the sample. We found the bureau is generally in compliance with state statutes except in the area of project status reports. The next sections explain these weaknesses.

File Documentation

Bureau officials use CON application files to provide a record of activity related to each application and as a source of information to aid decisions on other CON applications. The current CON application file system at the bureau does not provide adequate documentation of application review and decisions.

Applications contain data which should be verified for adequate decision making. We found bureau files contain very little documentation of verification of information submitted by the applicant. Without verification, the bureau must rely totally on the information provided by the applicant.

Files do not include documentation of the reasoning behind bureau/ department decisions. The bureau officially notifies the parties of its decisions through a findings of fact, conclusions of law, and order document. Detailed information supporting this document is not included in CON application files. Some files contained informal calculations related to decisions, but the calculations were difficult to understand because no explanations accompanied the calculations. In addition, documentation of the reasoning behind applicant and court decisions is not included in the files.

We identified a need for verification of application information and reasons for bureau and applicant decisions on CON applications. The bureau uses information from prior cases in making decisions on CON applications. Applicants can also use prior CON case information since CON files are open to public viewing. Without proper documentation confusion may result. Lack of documentation could create problems in health planning for both bureau officials and CON applicants.

A system for documentation of bureau verification of applicant data such as current population, Medicare certification, and number of licensed beds, and documentation of reasons for bureau, applicant and court decisions would provide necessary information and help assure adequate decision-making. Bureau officials indicate a greater effort will be made to document verification of application information and to provide more detail on decisions and calculations.

Status Reports

We found many bureau CON project files do not include status reports on approved projects. Only 6 of the 24 files we reviewed contained status reports, and only two of those six contained all required status reports. Section 16.32.130(2), ARM, requires approved project applicants to submit a status report to the department every 6 months after issuance of a CON and upon project completion.

Status reports allow bureau personnel to monitor approved projects, and ensure proper and timely project completion. Receipt of status reports will provide better information for future bureau decisions.

Bureau officials indicate many CON applicants do not know of the requirement to submit status reports. However, it is the responsibility of the Health Planning and Resource Development Bureau to inform applicants that they must submit status reports. Bureau officials indicated they will add text to their CON approval letters clarifying the responsibility of applicants to submit status reports.

REDUCED HEALTH PLANNING EFFORT

State and local health planning activities decreased significantly during the past several years. Some of the entities we contacted during our review believe that current health planning data is out-of-date and does not reflect the rapidly changing medical field. We did not review health planning data, but we noted the possibility of inadequate or out-of-date information due to decreases in bureau involvement.

Prior to 1985, the Health Systems Agency provided a broad-based health planning structure. Montana's Health Systems Agency is no longer operational due to a lack of federal funding. The reduction, and the subsequent loss, of federal funding for health planning led to the declines in health planning effort at the state and local levels. The percentage of bureau effort on health planning has declined from 45 percent of available time in 1985 to the current level of 20 percent, according to bureau estimates. Bureau staff concentrate available time on operation of the CON program.

Current and adequate health services information is essential to the department's decision process related to proposed CON projects. The small health planning staff at the bureau may not be able to collect and summarize the same amount of health planning data which was previously available with the Health Systems Agency and the SHCC. The department's decisions may be less effective if based on out-of-date or less detailed health services information. Bureau officials recognized the need for additional planning activity, and believe that the State Health Plan can be appropriately revised and updated on a continuing basis with the addition of one planner to their staff. This additional position was requested through the Executive Planning Process for the 1990-91 biennium, but was not granted.

STATEWIDE HEALTH COORDINATING COUNCIL (SHCC)

The Statewide Health Coordinating Council (SHCC) provides assistance to the Health Planning and Resource Development Bureau. Lack of funding resulted in a reduction of the number of Council members from 19 to 6 on July 1, 1987. The six member council currently consists of three members representing consumers of health care and three members representing providers of health care. The SHCC members representing consumers include individuals representing rural and urban medically-underserved populations. All members serve without compensation, but members receive state per diem and reimbursement for travel expenses incurred during SHCC duties.

SHCC functions include: 1) establishing formats for the Health Systems Plan and the State Health Plan; 2) preparing, reviewing, and revising the State Health Plan; 3) advising the Health Planning and Resource Development Bureau on the performance of its function; 4) reviewing annually and recommending approval or disapproval of any state plan and any application or revision of a state plan to the secretary of the U.S. Department of Health and Human Services; and 5) providing advisory and informational service relating to state and local conditions to the U.S. Department of Health and Human Services. The Montana State Health Plan is used as a guideline in the review of CON projects. The Plan provides policies, methods, and projections of needs and/or guidance in determining need for most of the health care facilities and services covered by CON.

OTHER STATES

During the audit we contacted health planning officials in 48 states and obtained CON program information. CON program status varies greatly from state to state. Many factors contribute to this variance, and this makes it difficult to directly compare other CON programs with Montana's CON program. Variations are found in: 1) types of facilities and services requiring certification; 2) threshold levels; 3) standards for review; and 4) the review process. Illustration 5 summarizes the information received from other states.

COMPARISON OF MONTANA WITH OTHER STATES
CERTIFICATE OF NEED PROGRAMS
(as of January 1988)

Characteristic	Other States With Characteristic	Montana
CON program in effect	36[1]	Yes
Streamline changes added	12	Yes
SUNSET provision	3	Yes
CON program not in effect	12[2]	---
Application fees charged	26	Yes
Funding:		
100% State General Fund	10	---
100% Application Fees	6	---
Mixed (State General Fund & Fees)	20	Yes
Threshold levels:		
Capital Expenditure (less) $1 million	20	---
(greater or equal) $1 million	15	Yes
New Services (less) $1 million	29	Yes
(greater or equal) $1 million	4	---
Medical Equipment (less) $1 million	23	Yes
(greater or equal) $1 million	10	---
Moratorium (temporary ban on construction and/or acquisition) in effect	10[3]	No

1 Arkansas changed their program to Permit Of Approval; Indiana maintains a CON program for psychiatric hospitals and long term care facilities only.

2 Louisiana never enacted a CON law.

3 Varies among the 10 states.

--- Does not apply.

Source: Compiled by Office of the Legislative Auditor

Illustration 5

CHAPTER III

AREAS FOR LEGISLATIVE CONSIDERATION

As mentioned previously, the CON program will terminate on July 1, 1989, unless the Legislature enacts specific legislation to continue the program. Chapter 477, Laws of 1987, required the DHES to provide the 1989 Legislature an evaluation of the need to continue the CON program beyond June 30, 1989, and to identify alternative legislation if CON were discontinued. Chapter 477 also requested the Legislative Audit Committee to review, and if possible, complete a performance audit of the CON program. We will provide information for the Legislature to use in making its decision to continue or discontinue CON. We present our information in four areas for legislative consideration:

1. SHCC involvement with the CON program.
2. Need for the CON program.
3. Continuation of the CON program.
4. Termination of the CON program.

STATEWIDE HEALTH COORDINATING COUNCIL (SHCC) INVOLVEMENT

The SHCC held two public meetings, the first to allow public comment on continuation/discontinuation of CON, and the second to allow additional public comment and to vote on its position on the CON program. SHCC committee members discussed continuation of CON at the second public hearing. Questions concerning proposed changes to the law, and expenditure and revenue levels of the CON program were raised. After a discussion, a motion to support continuation of CON was unanimously passed.

Two of the thirteen health care facility representatives submitting testimony at the SHCC public meetings opposed continuation of the CON program. Both parties represented hospitals and made comments including the following: 1) "Montana is the only Rocky Mountain state still having CON legislation"; 2) "CON does not reduce costs, it actually raises hospital costs"; 3) "hospitals are capable of self-regulation"; 4) "CON is a restraint of trade and hinders competition"; and 5) "studies show mortality rates were higher in hospitals with the most stringent CON programs, thus producing poorer quality patient outcomes."

The remaining 11 health care facility representatives submitting testimony at the SHCC public meetings supported continuation of the CON program. The following comments were made by various representatives: 1) "termination of CON would cause a proliferation of providers which would drive up health care costs"; 2) "CON enhances prudent, planned, and feasible growth"; 3) "national health

corporations would build and operate mental health and psychiatric hospitals without planning or analysis"; 4) "CON successfully prevents unnecessary duplication of services"; and 5) "other states have had costly increases in health care." Comments made at the SHCC public meetings seem to mirror opinions voiced in other states.

The DHES supports the SHCC position and has drafted a bill for continuance of the CON program. The only proposed change to the current CON law would be deletion of the sunset provision. The department intends to present information regarding the need for CON during presentation of proposed legislation.

NEED FOR CON

In general, it appears the CON process provides some control over health care provider construction and expansion. However, the fact that the department currently approves approximately 90 percent of CON applications, and if the department decision is appealed, approximately 25 percent of disapprovals are overturned, raises a question as to the extent of the control. Department officials believe that appeals have decreased since statutory changes in 1985 required appeals of decisions to be taken directly to district court rather than to the Board of Health. An unknown control factor is the effect of the process on the number of providers who decide not to submit an application for capital expenditures because of CON program requirements.

Measuring CON Effectiveness

Montana's experiences and nation-wide information indicate a tendency toward streamlining regulation and phasing out CON programs. Effects resulting from discontinuation of regulation in other states vary, and it is still too early to observe long term effects.

Many factors must be considered before determining whether to continue or discontinue CON. There are several different methods used to measure the effectiveness of CON including:

1. Application denial/withdrawal/modification rates.
2. Monetary savings associated with #1 above.
3. Conforming to state health plans.
4. Intensity of review.
5. Comparison to need standards.
6. Changes in health care costs.
7. Changes in services.

We contacted other states to obtain information regarding CON activity. We also reviewed CON activity in Montana. Information obtained during our review indicates measuring the effectiveness of CON is difficult and is not conclusive. The following paragraphs discuss different methods used to measure CON effectiveness and difficulties related to these methods.

An often used method of assessing the effect or success of a CON program is #2 on the previous page: comparing the dollar value of disapproved, withdrawn, and modified applications with the total dollar value of all applications as originally submitted. The result being monetary savings which are said to be a result of the CON program. Application denial/withdrawal/modification rates are similar to monetary savings measurements. The number of applications denied, withdrawn, and modified are compared to the total number of applications submitted. If a high percentage of denials, withdrawals, and/or modifications is present, the CON program is said to be effective.

Previous reviews of other state's CON processes and of CON processes in general suggest that these rates and monetary savings provide little measure of effectiveness. Health providers may increase their volume of applications or overstate their needs for resources to make sure their major interests can be attained. The rates fail to include factors such as growth rates, quality of care, and the actual intent of applications submitted. Thus, the meaning of these rates and monetary savings figures is unclear.

Previous reviews also indicate that using intensity of review to measure the success of CON is insufficient. CON programs across the U.S. vary in intensity of review. Some programs have a very thorough review while other programs have a cursory review. Intensity of review relies on the subjective interpretation of personnel administering CON.

Decisions on approval or denial of CON projects are based on needs criteria usually contained in the state health plan and available from other sources. CON is said to be effective if decisions on applications conform to the state health plan. Needs criteria is usually established by health planning personnel, and in some states, including Montana, health planning and CON are administered by the same personnel. Thus needs criteria can be subjective. In addition, need changes over time which makes comparisons inconsistent.

Changes in health care costs are also used to assess effectiveness of CON. If health care costs decrease or remain stable compared to other areas, CON is said to be effective due to cost containment. If health care costs increase, CON is said to be ineffective. Other factors such as economic depression and population changes must

be considered when determining effectiveness of CON based on cost containment. Changes in health care costs may or may not indicate effectiveness of CON.

Assessing effectiveness of CON through changes in services is similar to assessment through changes in health care costs. Other factors must be considered before determining the effectiveness of CON.

Procedures for obtaining information on CON effectiveness seem to be based on interviews, interpretations, and subsequent conclusions. Evidence that CON, itself, has had an effect on costs and availability of services is not conclusive. Some reports indicate CON programs have not achieved the goal of cost containment. One state's report indicates legislative reluctance to abolish CON because of a "fear" of health care cost inflation.

Health Care Entity Opinions

During our review we contacted various health care planners, advisors, consumers, and providers to obtain their opinions on the need for control through the CON program. Thirty-five entities, representing various facilities including hospitals, nursing homes, hospices, health associations, and state agencies, out of 82 entities contacted provided responses. The following illustration summarizes the comments of the 35 respondents:

Health Care Entity Opinions
On Need For CON

		Response		
	Question Asked	Yes	No	No Comment
1.	Is CON Effective?	18	9	8
		Yes	No	No Comment
2.	Should CON Continue? (9 of the 19 suggest modification to CON)	19	11	5
		Yes	No	No Comment
3.	Are Health Planning Efforts Adequate?	7	7	21

Source: Compiled by Office of the Legislative Auditor

Illustration 6

The entities we contacted also expressed various comments either in support or in opposition to Montana's CON program:

In Opposition:

-- health care is too heavily regulated
-- appeals of applications can be expensive
-- CON does not contain costs or reduce capital expansion
-- CON adds to the costs of completing a project
-- nobody builds a health care facility that isn't needed
-- the free market is a good alternative to CON
-- the free market is more self-regulating on the hospital side
-- CON may contribute to the existence of poor quality care

In Support:

-- CON attempts to assure scarce resources are not duplicated
-- monopolistic practices would go unchecked without CON
-- CON avoids, to some extent, unnecessary expenses
-- large hospitals and out of state nursing homes oppose CON because it restricts their spending and growth
-- budgeting for Medicaid expenditures would become increasingly difficult without CON
-- the nursing home/long term care industry does not respond well to a competitive environment
-- if repealed, CON should be phased out over a 10 year period

The only major health care providers in opposition to continuance of Montana's CON program are hospitals. Nursing home facilities support the

continuance of CON. Other entities express mixed views about their position on continuance/discontinuance of Montana's CON program. It appears changes in the CON process will effect different health care providers in different ways.

CONTINUATION OF THE CON PROGRAM

There are two options for continuation of CON: 1) continuation without revision; and 2) continuation with revision. The first option requires legislation to continue the CON program beyond June 30, 1989. Current CON statutes would remain the same. The bureau has introduced a bill to the 1989 Legislature for continuation of the CON program without revision. The only proposed change to the current CON law is contained in the sunset provision. If the Legislature includes a sunset provision, the bureau will request a four year period instead of a two year period.

Several changes are possible under the second option:

a) Raise or lower the threshold levels.
b) Limit or expand regulation to specific facilities and services.
c) Increase or decrease application fees.
d) Limit or expand CON requirements.

Threshold levels limit the number of projects requiring certification. If a project does not exceed the thresholds, and does not fall under other CON requirements, that project is not required to apply for a CON. Current threshold levels resulted from a raise to levels under Chapter 477, Laws of 1987.

As mentioned previously, only specific facilities and services are subject to the CON process. These facilities and services are defined in section 50-5-301, MCA. One possibility which exists under this option is limiting regulation to specific facilities and/or services. For example, hospitals could be exempt from CON review while nursing home facilities still require CON review and approval. If hospitals initiated any projects with nursing home beds involved, they would still be required to apply for a CON.

Application fees are based on capital expenditures for each project. The application fee is 0.3 percent of the proposed capital expenditure, but not less than $500.00. If application fees are raised, health care facilities and services may reduce submissions of CON applications.

Various requirements for when certification is needed are stated in section 50-5-301, MCA. The major requirements are the threshold levels and facility and service definitions mentioned previously. The requirements also contain specifics

such as bed capacity change levels. Changes to these requirements would be similar to changes in facility and service regulation.

By raising threshold levels, limiting regulation, and/or limiting CON requirements, the CON process will be effected. Any one or a combination of these options will result in a decrease to the number of projects requiring review under the CON program. On the other hand, by lowering threshold levels, expanding regulation, and/or expanding CON requirements, CON project review will increase.

TERMINATION OF THE CON PROGRAM

Allowing CON to sunset with no related legislation being passed is an option for consideration. This would allow the market to control health care facilities and services. Elimination of CON in other states has generally increased the number of facilities or services, but the long-range effect of these increases is unknown. The following lists show possible effects resulting from CON program termination with no alternative regulation. The first list shows effects which have taken place in other states:

1. Rapid expansion and new construction of health care facilities, the most drastic being hospital and nursing home bed increases, and new psychiatric hospitals (Wisconsin, Arizona, Utah, New Mexico, Colorado).
2. Financial damage to and loss of services (Wisconsin, Minnesota, Arizona).
3. Decreases in hospital utilization (Utah, Minnesota, Colorado, Arizona).
4. Relicensing of hospital beds as nursing home or long term care beds (Arizona).
5. Decreases in construction (California).
6. Market control of industry (Utah, Minnesota).
7. No drastic increases or changes (Wyoming, Texas, Kansas, Idaho).

The following list shows possible effects from CON program termination predicted by health care providers and/or consumers:

1. Increased hospital efficiency due to market pressure incentives to reduce costs.
2. Formation of more cost-effective delivery systems.
3. Increased development of creative reimbursement and alternative treatment practices.
4. Increases in services available to consumers.
5. Excess building and market saturation in economically healthy areas.
6. Increased health care costs to consumers.
7. Decreases in quality of care.

Some states experienced one or several adverse effects from CON program termination, while other states experienced no adverse effects or had favorable

results. There are factors which contribute to effects from CON program termination including economic conditions, competition, occupancy rates, population changes and concentrations, and market changes. All these factors influenced the outcome of other states' termination of CON programs, but these factors had different effects in each state. Thus, effects similar to those mentioned previously may or may not happen in Montana with CON program termination.

If Montana's CON program is discontinued, there will be no control over increases in the number of health care facilities. Bureau officials indicate the Department of Social and Rehabilitation Services is considering reducing reimbursements and/or restricting eligibility requirements, in the absence of CON, to help control Medicaid costs.

Alternatives to CON

Bureau officials provided the following list of alternatives to CON which have been implemented or proposed in other states. These alternatives attempt to control development of excess health services in medical facilities.

1. Capital Expenditure Limits: may be applied statewide or by institution. Limits may be imposed on a per year basis or totaled over a few years. Statewide limits would require review of competing applications.

2. Moratoriums: are used as temporary measures, but may require review of special exceptions. A moratorium is a temporary ban on activity such as construction or bed additions.

3. Rate Regulations: can be expensive to operate and are only initiated in states with high and/or rapidly increasing health care costs.

4. Service Contracts: such as Medicaid, can be purchased by competitive bidding, but are not feasible in communities which are served by single providers of facility-based services.

5. Fixed Medicaid Rates: could be set at levels which would discourage unnecessary development of services. Rates could be based only on services required and not adjusted by facility. This alternative does not impact hospitals as significantly as nursing homes because of Medicaid purchasing percentages.

SUMMARY

In summary, it is difficult to ascertain whether Montana's CON program has been effective enough to continue the program beyond June 30, 1989. Various economic factors influenced the outcome of other states' termination of CON programs. These factors had different short-term effects in each state, but long-term effects are unknown.